REMARKS

This Response C is submitted with respect to the Office Action dated February 23, 2006, having a shortened statutory period set to expire May 23, 2006. No claims are amended in this response, and Claims 1-2, 5-10 and 14-23 are presently pending.

I. Introduction to claim rejections under 35 U.S.C. § 103

Claims 1-2, 5-10 and 14-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application publication # 2004/0044760 by Deily, *et al.* (*Deily*) in view of the Examiner's assertion of modifications that would have been obvious to one of ordinary skill in the art at the time the invention was made (*hereinafter, common knowledge*). Applicant respectfully traverses each of the Examiner's rejections in view of the discussion made herein, and favorable reconsideration of the claims is requested.

At page three of the present office action, the Examiner concedes, with respect to Claim 1 that "Deily does not specify the TCP/IP library is in the user space." However, the Examiner subsequently asserts that "it would have been obvious to a person of ordinary skill in the art at the time the invention was made to including a TCP/IP library in user space, because doing so would improve the integrity of the system by keeping the request processing module and the protocol library in the same place." For the three reasons detailed below, Applicant respectfully traverses the Examiner's assertion of the obviousness of his modification of the reference.

II. Insufficient evidence of a motivation to alter the reference is presented.

With respect to exemplary Claim 1, Applicant respectfully submits that the Examiner's proposed alteration of *Deily* on the basis of alleged *common knowledge* does not render obvious Applicant's invention because the proposed combination lacks sufficient evidence of motivation or suggestion to alter the reference in the manner suggested by the Examiner, which motivation or suggestion is a necessary prerequisite for the proposed combination to render Applicant's invention obvious. M.P.E.P. § 2143. In evaluating motivation or suggestion to combine reference teachings, "a prior art reference must be considered in its entirety, *i.e.*, as a <u>whole</u>"

(emphasis in original). M.P.E.P. § 2141.02, citing *W.L. Gore and Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir 1983) *cert. denied*, 469 U.S. 851 (1984).

When taken as a whole, the Examiner alleges that *Deily* discloses a web server architecture with a TCP/IP library in kernel space (*2/23/06 Office Action* at paragraph 5), while flatly asserting, "it would be obvious to a person of ordinary skill in the art at the time the invention was made to including [sic] a TCP/IP library in user space." In view of the teachings of the references when taken as a whole, it is apparent that there is no objective suggestion or motivation in the cited references (or generally in the art) that would lead a skilled artisan to *alter the reference teachings* to obtain *the present invention*. It is incumbent upon the Examiner to show, not merely that the alteration of the references is advantageous, but to show that the prior art disclosed some teaching, suggestion, or incentive to make the combination made by the inventor. *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 930, 15 USPQ2d 1321 (Fed. Cir. 1990). Instead, at paragraph 21, the Examiner merely asserts:

> However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to including a TCP/IP library in user space because doing so would improve the integrity of the system by keeping the request processing module and the protocol library in the same space.

While the expectation of an advantage, such as the general enhancement to *Deily* relied upon by the Examiner, can in some cases provide motivation to combine references, such a motivation is not facially adequate where the references do not teach the alteration of the reference to achieve the features recited in Applicant' claim. The cited passages *Deily* do generally discuss a web server architecture, but the cited passages would not lead one skilled in the art to modify *Deily* to obtain Applicant's invention. If, as the Examiner has suggested, such a teaching existed in the *common knowledge* available to one skilled in the art, Applicant does not doubt that the Examiner would have easily found such a reference and cited it. Because the Examiner's combination of references is not supported by any objective teaching in the references or art, Applicant believes that the examiner has failed to establish a *prima facie* case of obviousness.

III. *Deily* teaches away from the claimed invention.

Applicant respectfully traverses the Examiner's assertion of obviousness, because the reference cited by the Examiner teaches away from the features described in Applicants claim. It is settled law that the fact that an inventor proceeded contrary to the accepted wisdom of the prior art is "strong evidence of nonobviousness". *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 721 F.2d 1540, 220 U.S.P.Q. 303, 312 (Fed. Cir. 1983). In spite of this well-settled doctrine of law, the Examiner presents *Deily*, which embodies the conventional wisdom in design of the relevant systems, and then asserts that *common knowledge* would motivate modification of *Deily* for creation of a system that is designed in a contrary manner.

Deily describes a kernel-based listener service. Referring to Figure 4 of *Deily*, it is readily appearent that *Deily* teaches a web server in which novel code (the Universal listener **402**) is incorporated into the kernel space. *Deily* reports that doing so reduces the number of user mode "service hops" that occur later. See, *e.g.*, paragraph 60 of *Deily*. Thus, *Deily* teaches adding code <u>to the kernel space</u> for the purpose of reducing the number of user mode context switches.

In direct contrast to the clear teaching of *Deily*, Claim 1 recites that code is incorporated into the <u>user space</u>, so that the user space web server can process web requests within the user space (*i.e.*, without invoking the kernel). Specifically, Claim 1 recites the inclusion of user space TCP/IP libraries that enable the web server (which is a user space applicaton) to process client requests. Referring back to Figure 4 of *Deily*, the TCP/IP library of *Deily* is clearly part of the kernel. As the Examiner has acknowledged, there is no teaching or suggestion in *Deily* to incorporate TCP/IP code 202 into the user space because *Deily* is concerned with adding functionality to the kernel as a means for reducing user mode context switches. Thus, *Deily* teaches incorporating more code into the <u>kernel space</u>, while Applicant's Claim 1 emphasizes a conceptually opposed design for implanting code in the user space. One having the benefit of *Deily* would not be motivated to incorporate a TCP/IP library into user space because *Deily* describes that a system that is designed to reduce the amount of processing handled in user

space. Because the cited reference teaches away from Applicants' invention, Applicant believes that the examiner has failed to establish a *prima facie* case of obviousness.

III. The modification suggest by the Examiner would render *Deily* unsuitable for it's intended purpose.
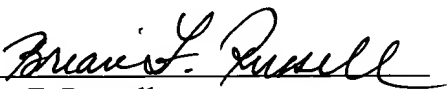
Applicant respectfully submits that there is no suggestion or motivation to make a modification to the prior art that "would render the prior art invention being modified unsatisfactory for its intended purpose." MPEP 2143.01 (citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). As described above, the intended purpose of *Deily* is to reduce the amount of processing handled in user space. The Examiner's modification of *Deily* "to include[e] a TCP/IP library in user space because doing so would improve the integrity of the system by keeping the request processing module and the protocol library in the same space" would frustrate the very purpose for which the *Deily* reference was designed. Consequently, the Examiner's proposed modification of *Deily* would not be obvious to those skilled in the art and the rejection under 35 USC § 103 is overcome.

IV. Conclusion

Applicant has diligently responded to the Office Action by demonstrating the patentability of the of the subject matter of Claim 1 with respect to the alteration of the *Deily* reference that has been suggested by the Examiner. Claim 2 and Claims 5-8 depend from and further distinguish Claim 1, and are similarly patentable. Claims 9 and 17, because they respectively claim an apparatus and a computer program product with features similar to Applicant's claim 1, are similarly patentable over the combination suggested by the Examiner, as are their dependent claims 10, 14-15, 19 and 21-23. The arguments contained herein overcome all §103 rejections presented by the Examiner, and Applicant, therefore, respectfully requests reconsideration of the rejection and issuance of a Notice of Allowance for all claims now pending.

Applicant further respectfully requests the Examiner contact the undersigned attorney of record at 512.343.6116 if such would further or expedite the prosecution of the present Application.

Respectfully submitted,

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